

AMENDED IN SENATE APRIL 10, 2012

**SENATE BILL**

**No. 968**

**Introduced by Senator Wright**

**(Coauthor: Senator Price)**

(Coauthors: Assembly Members Bradford and Ma)

January 13, 2012

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An act to amend Section 1203.018 of, and to add Section 1269d to, the Penal Code, relating to electronic monitoring, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 968, as amended, Wright. Inmates: electronic monitoring.

Existing law authorizes the board of supervisors of any county to authorize the correctional administrator, as defined, to offer a program under which only inmates being held in lieu of bail in a county jail or other county correctional facility may participate in an electronic monitoring program if the inmate is not the subject of a hold or an outstanding warrant and any one of certain conditions are met.

~~This bill would also authorize this program to apply to inmates eligible for bail and add as one of the conditions of eligibility for the program that the magistrate has approved the electronic monitoring release, as provided. The~~ This bill would authorize a defendant arrested without a warrant for a bailable offense and who meets certain criteria *that is a felony punishable in a county jail* to apply, after 10 court days from the date of arraignment, for release on a reduced bail if the defendant agrees to be placed in the *an* electronic monitoring program, and the magistrate and the correctional administrator determine that the defendant is eligible to participate in the program *administered by the county-authorized correctional administrator*.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote:  $\frac{2}{3}$ . Appropriation: no. Fiscal committee: yes.

State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     ~~SECTION 1. Section 1203.018 of the Penal Code is amended~~  
2     ~~to read:~~

3     ~~1203.018. (a) Notwithstanding any other law, this section shall~~  
4     ~~only apply to inmates eligible for bail or being held in lieu of bail~~  
5     ~~and on no other basis.~~

6     ~~(b) Notwithstanding any other law, the board of supervisors of~~  
7     ~~any county may authorize the correctional administrator, as defined~~  
8     ~~in paragraph (1) of subdivision (k), to offer a program under which~~  
9     ~~inmates eligible for bail or being held in lieu of bail in a county~~  
10    ~~jail or other county correctional facility may participate in an~~  
11    ~~electronic monitoring program if the conditions specified in~~  
12    ~~subdivision (e) are met.~~

13    ~~(c) (1) In order to qualify for participation in an electronic~~  
14    ~~monitoring program pursuant to this section, the inmate must be~~  
15    ~~an inmate with no holds or outstanding warrants to whom one of~~  
16    ~~the following circumstances applies:~~

17    ~~(A) The inmate has been held in custody for at least 30 calendar~~  
18    ~~days from the date of arraignment pending disposition of only~~  
19    ~~misdemeanor charges.~~

20    ~~(B) The inmate has been held in custody pending disposition~~  
21    ~~of charges for at least 60 calendar days from the date of~~  
22    ~~arraignment.~~

23    ~~(C) A magistrate has approved the electronic monitoring release~~  
24    ~~pursuant to Section 1269d.~~

25    ~~(2) All participants shall be subject to discretionary review for~~  
26    ~~eligibility and compliance by the correctional administrator~~  
27    ~~consistent with this section.~~

28    ~~(d) The board of supervisors, after consulting with the sheriff~~  
29    ~~and district attorney, may prescribe reasonable rules and regulations~~  
30    ~~under which an electronic monitoring program pursuant to this~~  
31    ~~section may operate. As a condition of participation in the~~  
32    ~~electronic monitoring program, the participant shall give his or~~  
33    ~~her consent in writing to participate and shall agree in writing to~~

1 comply with the rules and regulations of the program, including,  
2 but not limited to, all of the following:

3 (1) ~~The participant shall remain within the interior premises of~~  
4 ~~his or her residence during the hours designated by the correctional~~  
5 ~~administrator.~~

6 (2) ~~The participant shall admit any person or agent designated~~  
7 ~~by the correctional administrator into his or her residence at any~~  
8 ~~time for purposes of verifying the participant's compliance with~~  
9 ~~the conditions of his or her detention.~~

10 (3) ~~The electronic monitoring may include global positioning~~  
11 ~~system devices or other supervising devices for the purpose of~~  
12 ~~helping to verify the participant's compliance with the rules and~~  
13 ~~regulations of the electronic monitoring program. The electronic~~  
14 ~~devices shall not be used to eavesdrop or record any conversation,~~  
15 ~~except a conversation between the participant and the person~~  
16 ~~supervising the participant to be used solely for the purposes of~~  
17 ~~voice identification.~~

18 (4) ~~The correctional administrator in charge of the county~~  
19 ~~correctional facility from which the participant was released may,~~  
20 ~~without further order of the court, immediately retake the person~~  
21 ~~into custody if the electronic monitoring or supervising devices~~  
22 ~~are unable for any reason to properly perform their function at the~~  
23 ~~designated place of home detention, if the person fails to remain~~  
24 ~~within the place of home detention as stipulated in the agreement,~~  
25 ~~if the person willfully fails to pay fees to the provider of electronic~~  
26 ~~home detention services, as stipulated in the agreement, subsequent~~  
27 ~~to the written notification of the participant that the payment has~~  
28 ~~not been received and that return to custody may result, or if the~~  
29 ~~person for any other reason no longer meets the established criteria~~  
30 ~~under this section.~~

31 (5) ~~A copy of the signed consent to participate and a copy of~~  
32 ~~the agreement to comply with the rules and regulations shall be~~  
33 ~~provided to the participant and a copy shall be retained by the~~  
34 ~~correctional administrator.~~

35 (e) ~~The rules and regulations and administrative policy of the~~  
36 ~~program shall be reviewed on an annual basis by the county board~~  
37 ~~of supervisors and the correctional administrator. The rules and~~  
38 ~~regulations shall be given to every participant.~~

39 (f) ~~Whenever the peace officer supervising a participant has~~  
40 ~~reasonable cause to believe that the participant is not complying~~

1 with the rules or conditions of the program, or that the electronic  
2 monitoring devices are unable to function properly in the  
3 designated place of confinement, the peace officer may, under  
4 general or specific authorization of the correctional administrator,  
5 and without a warrant of arrest, retake the person into custody.

6 (g) (1) Nothing in this section shall be construed to require the  
7 correctional administrator to allow a person to participate in this  
8 program if it appears from the record that the person has not  
9 satisfactorily complied with reasonable rules and regulations while  
10 in custody. A person shall be eligible for participation in an  
11 electronic monitoring program only if the correctional administrator  
12 concludes that the person meets the criteria for release established  
13 under this section and that the person's participation is consistent  
14 with any reasonable rules and regulations prescribed by the board  
15 of supervisors or the administrative policy of the correctional  
16 administrator.

17 (2) The correctional administrator, or his or her designee, shall  
18 have discretionary authority consistent with this section to permit  
19 program participation as an alternative to physical custody. All  
20 persons approved by the correctional administrator to participate  
21 in the electronic monitoring program pursuant to subdivision (c)  
22 who are denied participation and all persons removed from program  
23 participation shall be notified in writing of the specific reasons for  
24 the denial or removal. The notice of denial or removal shall include  
25 the participant's appeal rights, as established by program  
26 administrative policy.

27 (h) The correctional administrator may permit electronic  
28 monitoring program participants to seek and retain employment  
29 in the community, attend psychological counseling sessions or  
30 educational or vocational training classes, or seek medical and  
31 dental assistance.

32 (i) Willful failure of the program participant to return to the  
33 place of home detention prior to the expiration of any period of  
34 time during which he or she is authorized to be away from the  
35 place of home detention pursuant to this section and unauthorized  
36 departures from the place of home detention is punishable pursuant  
37 to Section 4532.

38 (j) The board of supervisors may prescribe a program  
39 administrative fee to be paid by each electronic monitoring  
40 participant.

1 ~~(k) For purposes of this section, the following terms have the~~  
2 ~~following meanings:~~

3 ~~(1) “Correctional administrator” means the sheriff, probation~~  
4 ~~officer, or director of the county department of corrections.~~

5 ~~(2) “Electronic monitoring program” includes, but is not limited~~  
6 ~~to, home detention programs, work furlough programs, and work~~  
7 ~~release programs.~~

8 ~~(l) Notwithstanding any other law, upon request of a local law~~  
9 ~~enforcement agency with jurisdiction over the location where a~~  
10 ~~participant in an electronic monitoring program is placed, the~~  
11 ~~correctional administrator shall provide the following information~~  
12 ~~regarding participants in the electronic monitoring program:~~

13 ~~(1) The participant’s name, address, and date of birth.~~

14 ~~(2) The offense or offenses alleged to have been committed by~~  
15 ~~the participant.~~

16 ~~(3) The period of time the participant will be placed on home~~  
17 ~~detention.~~

18 ~~(4) Whether the participant successfully completed the~~  
19 ~~prescribed period of home detention or was returned to a county~~  
20 ~~correctional facility, and if the person was returned to a county~~  
21 ~~correctional facility, the reason for the return.~~

22 ~~(5) The gender and ethnicity of the participant.~~

23 ~~(6) If released pursuant to Section 1269d, the name, address,~~  
24 ~~and contact information of any bail agent or surety.~~

25 ~~(m) Any information received by a law enforcement agency~~  
26 ~~pursuant to subdivision (l) shall be used only for the purpose of~~  
27 ~~monitoring the impact of home electronic monitoring programs in~~  
28 ~~the community.~~

29 ~~(n) It is the intent of the Legislature that electronic monitoring~~  
30 ~~programs established under this section maintain the highest public~~  
31 ~~confidence, credibility, and public safety. In the furtherance of~~  
32 ~~these standards, the following shall apply:~~

33 ~~(1) The correctional administrator, with the approval of the~~  
34 ~~board of supervisors, may administer an electronic monitoring~~  
35 ~~program as provided in this section pursuant to written contracts~~  
36 ~~with appropriate public or private agencies or entities to provide~~  
37 ~~specified program services. No public or private agency or entity~~  
38 ~~may operate a home detention program pursuant to this section in~~  
39 ~~any county without a written contract with that county’s~~  
40 ~~correctional administrator. No public or private agency or entity~~

1 entering into a contract pursuant to this subdivision may itself  
2 employ any person who is in the electronic monitoring program.

3 (2) ~~Program participants shall undergo the normal booking~~  
4 ~~process for arrestees entering the jail. All electronic monitoring~~  
5 ~~program participants shall be supervised.~~

6 (3) (A) ~~All privately operated electronic monitoring programs~~  
7 ~~shall be under the jurisdiction of, and subject to the terms and~~  
8 ~~conditions of the contract entered into with, the correctional~~  
9 ~~administrator.~~

10 (B) ~~Each contract specified in subparagraph (A) shall include,~~  
11 ~~but not be limited to, all of the following:~~

12 (i) ~~A provision whereby the private agency or entity agrees to~~  
13 ~~operate in compliance with any available standards and all state~~  
14 ~~and county laws applicable to the operation of electronic~~  
15 ~~monitoring programs and the supervision of offenders in an~~  
16 ~~electronic monitoring program.~~

17 (ii) ~~A provision that clearly defines areas of respective~~  
18 ~~responsibility and liability of the county and the private agency or~~  
19 ~~entity.~~

20 (iii) ~~A provision that requires the private agency or entity to~~  
21 ~~demonstrate evidence of financial responsibility, submitted to and~~  
22 ~~approved by the board of supervisors, in amounts and under~~  
23 ~~conditions sufficient to fully indemnify the county for reasonably~~  
24 ~~foreseeable public liability, including legal defense costs that may~~  
25 ~~arise from, or be proximately caused by, acts or omissions of the~~  
26 ~~contractor.~~

27 (iv) ~~A provision that requires the private agency or entity to~~  
28 ~~provide evidence of financial responsibility, such as certificates~~  
29 ~~of insurance or copies of insurance policies, prior to commencing~~  
30 ~~any operations pursuant to the contract or at any time requested~~  
31 ~~by the board of supervisors or correctional administrator.~~

32 (v) ~~A provision that requires an annual review by the~~  
33 ~~correctional administrator to ensure compliance with requirements~~  
34 ~~set by the board of supervisors and for adjustment of the financial~~  
35 ~~responsibility requirements if warranted by caseload changes or~~  
36 ~~other factors.~~

37 (vi) ~~A provision that permits the correctional administrator to~~  
38 ~~immediately terminate the contract with a private agency or entity~~  
39 ~~at any time that the contractor fails to demonstrate evidence of~~  
40 ~~financial responsibility.~~

1 ~~(C) All privately operated electronic monitoring programs shall~~  
2 ~~comply with all applicable ordinances and regulations specified~~  
3 ~~in subdivision (a) of Section 1208.~~

4 ~~(D) The board of supervisors, the correctional administrator,~~  
5 ~~and the designee of the correctional administrator shall comply~~  
6 ~~with Section 1090 of the Government Code in the consideration,~~  
7 ~~making, and execution of contracts pursuant to this section.~~

8 ~~(E) The failure of the private agency or entity to comply with~~  
9 ~~state or county laws or with the standards established by the~~  
10 ~~contract with the correctional administrator shall constitute cause~~  
11 ~~to terminate the contract.~~

12 ~~(F) Upon the discovery that a private agency or entity with~~  
13 ~~which there is a contract is not in compliance with this paragraph,~~  
14 ~~the correctional administrator shall give 60 days' notice to the~~  
15 ~~director of the private agency or entity that the contract may be~~  
16 ~~canceled if the specified deficiencies are not corrected.~~

17 ~~(G) Shorter notice may be given or the contract may be canceled~~  
18 ~~without notice whenever a serious threat to public safety is present~~  
19 ~~because the private agency or entity has failed to comply with this~~  
20 ~~section.~~

21 ~~(H) For purposes of this section, "evidence of financial~~  
22 ~~responsibility" may include, but is not limited to, certified copies~~  
23 ~~of any of the following:~~

24 ~~(i) A current liability insurance policy.~~

25 ~~(ii) A current errors and omissions insurance policy.~~

26 ~~(iii) A surety bond.~~

27 ~~SEC. 2.~~

28 *SECTION 1.* Section 1269d is added to the Penal Code, to read:

29 1269d. (a) Notwithstanding any other provision of law, if a  
30 defendant is arrested without a warrant for a bailable offense ~~and~~  
31 ~~meets the criteria specified in paragraph (1) of subdivision (c) of~~  
32 ~~Section 1203.018, punishable by imprisonment pursuant to~~  
33 ~~subdivision (h) of Section 1170, he or she may, either personally~~  
34 ~~or through his or her attorney, friend, or family member, make an~~  
35 ~~application to the magistrate after 10 court days from the date of~~  
36 ~~arraignment at the preliminary hearing, or anytime thereafter, for~~  
37 ~~release on bail reduced by up to 75 percent of the amount of the~~  
38 ~~defendant's bail if the defendant agrees to be placed in an~~  
39 ~~electronic monitoring program administered by the~~  
40 ~~county-authorized correctional administrator.~~

1     ~~(b) A court may reduce the defendant's bail by up to 75 percent~~  
2 ~~pursuant to this section only if the defendant is placed in an~~  
3 ~~electronic monitoring program authorized by a county board of~~  
4 ~~supervisors pursuant to Section 1203.018, and the court and~~  
5 ~~correctional administrator make determinations that the defendant~~  
6 ~~is eligible to participate in an electronic monitoring program as~~  
7 ~~defined in Section 1203.018.~~

8     *(b) If the defendant is released pursuant to this section, the*  
9 *name, address, and contact information of any applicable bail*  
10 *agent or surety shall be provided to the court and the correctional*  
11 *administrator responsible for providing the electronic monitoring*  
12 *program.*

13     ~~SEC. 3.~~

14     SEC. 2. This act is an urgency statute necessary for the  
15 immediate preservation of the public peace, health, or safety within  
16 the meaning of Article IV of the Constitution and shall go into  
17 immediate effect. The facts constituting the necessity are:

18     In order to implement prison realignment, reduce prison costs,  
19 and clarify those who are eligible for release for electronic  
20 monitoring as soon as possible, it is necessary that this act take  
21 effect immediately.